IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5894 OF 2005

Balasaheb Sitaram Kadam ... Petitioner

V/s

Smt. Chanda Shankar Dalavi & ors. ... Respondents

Mr. Rahul S. Kate for the petitioner.

CORAM: P.V. KAKADE, J.

DATED: 7TH FEBRUARY, 2006

P.C.:

1. The petitioner has preferred this petition against the judgment and order passed by the Addl. District Judge, Paramati, dated 2.2.2005 partly allowing the appeal but confirming the decree of eviction from the suit premises against the present petitioner and other consequential directions.

2. Heard learned counsel for the petitioner.

3. The suit was filed by the respondent landlords for possession and arrears of rent from the defendant on the

ground that the defendants were defaulters in payment of rent for more than six months prior to the notice and hence was rendered defaulter in law and hence sought possession of premises.

3. The defendants challenged the suit on various grounds inter-alia submitting that the defendant Nos.2 to 4 were not landlords but one Manik Bhise was the landlord of the suit premises to whom he had paid the rent and, therefore, he was not in arrears of payment of rent.

4. The Trial Court adjudicated the dispute and came to the conclusion that the plaintiff had proved that defendant No.1 was his tenant in the suit premises since 1984 and was rendered defaulter in law as he had not paid the rent since 1.8.1991 and, as such, was liable to be evicted from the suit premises and decree came to be passed.

The appeal was carried to the Court of Addl. District Judge, Baramati. The learned lower appellate Court Judge, after hearing both parties, on the basis of evidence came to the conclusion that it was proved from the evidence that plaintiff and defendant Nos. 2 to 4

were the landlords and defendant No.1 was the tenant in the suit room and that the defendant No.1 was not in arrears of payment of rent since 1.8.1991. The notice of demand of the rent also was held to be proved and, as such, the suit came to be decreed and appeal was dismissed to the extent of direction regarding eviction from the suit premises. Hence the petition.

5. At the outset, it may be noted that though the defendants have taken a plea that Manik Bhise was the landlord, there is not an iota of evidence to show that Manik Bhise was either owner or in any capacity landlord of the suit premises though Manik Bhise has himself entered into the witness box showing that he is owner of the suit premises. On the other hand, the evidence of the plaintiff is sufficient to show that plaintiff and defendant Nos. 2 to 4 are the landlords and owners of the suit premises and defendant No.1 is their tenant therein.

6. Without further elaboration, therefore, the judgments of both the Courts below are clear enough to show that the order of eviction passed on the ground of default in payment of rent is passed legally and properly so far as the question of default in payment of

arrears of rent is concerned. It is more or less admitted position because evidently the rent is never paid to the plaintiff but defendant Nos. 2 to 4 who appears to have no concern with the premises so as to claim landlordship regarding the suit premises.

7. In view of this position, the petition is devoid of any merits and hence dismissed in limine.

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